THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 12168 of 2006

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Oral order:

The petitioner was appointed as Conductor on 09.12.1991. On 23.12.1992, while the petitioner was conducting the bus on the route Makthal to Narayanpet, a check was exercised, and the checking officials having found certain cash and ticket irregularities, issued charge memo. The petitioner submitted his explanation.

Dissatisfied with the explanation, the petitioner was placed under suspension and a charge sheet was issued. The Enquiry Officer, who conducted enquiry into the charges, held the charges proved. Based on the enquiry report, the 1st respondent vide proceedings dated 30.03.1993 issued notice to the petitioner to show cause as to why he should not be removed from service. The petitioner submitted his explanation thereto on 08.04.1993. However, vide proceedings dated 12.04.1993, the 1st respondent removed the petitioner from service. The appeal and review petition filed by the petitioner assailing the order of removal, were dismissed. Assailing the order of removal, the petitioner raised an industrial dispute in I.D. No. 402 of 1997 on the file of the Labour Court-III, Hyderabad, which on transfer to the Industrial Tribunal-I, Hyderabad, was renumbered as I.D. No. 107 of 1999. The Labour Court, vide the award dated 21.03.2000, directed the respondents to reinstate the petitioner into service as temporary Conductor on the wages that were applicable on the date of appointment, and denied him backwages and continuity of service. Assailing the award of the Labour Court, insofar as it denied continuity of service and backwages, the petitioner filed this writ petition.

The learned counsel for the petitioner submitted that the Labour Court having directed the respondents to reinstate the petitioner into service, committed error in not granting the benefit of continuity of service and backwages. He submitted that the punishment of denial of continuity of service and backwages, is disproportionate to gravity of the charges leveled, and prayed that the award of the Labour Court to the extent of denying continuity of service and backwages, be set

aside and the writ petition be allowed.

The learned Standing Counsel for the respondents-APSRTC contended that the order passed by the disciplinary authority removing the petitioner from service, was confirmed in appeal and review petition, and even though the Labour Court upheld the guilty of the petitioner, yet directed the respondents to reinstate the petitioner into service, but denied continuity of service and backwages, and the said award, passed by the Labour Court, in no manner can be said to be illegal or arbitrary.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The Labour Court upon considering the evidence on record, found that even though there were few passengers in the bus, the petitioner failed to issue tickets to three passengers. However, considering the fact that removal from service is disproportionate to the charges proved, the Labour Court directed the respondents to reinstate the petitioner into service as temporary Conductor, but denied continuity of service and backwages. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or

termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]).

In the instant case, though the Labour Court directed the respondents to reinstate the petitioner as temporary Conductor, the fact remains, denied him continuity of service and backwages. It is not as if the petitioner was directed to be reinstated upon the charges leveled against him were set aside. The Labour Court while upholding the charges leveled against the petitioner, directed his reinstatement into service as temporary Conductor. At any rate, the petitioner having been denied continuity of service, cannot claim entitlement of backwages, and more so when the charges leveled against him, were upheld by the Labour Court.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

In the above view of the matter, I find no infirmity or perversity in the award passed by the Labour Court, warranting interference by this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Dated: 20th June, 2006.

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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63